

AMENDED IN ASSEMBLY APRIL 17, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1603

**Introduced by Assembly Members Feuer and Eng
(Coauthors: Assembly Members Dickinson and Skinner)**

February 6, 2012

An act to add Article 1.7 (commencing with Section 2946) to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, as amended, Feuer. Mortgages and deeds of trust: mortgage servicers: force-placed insurance.

Existing law generally regulates mortgages and deeds of trust, including, among other things, recording mortgages and deeds of trust, disclosures in connection with mortgages and deeds of trust, and foreclosure procedures for mortgages and deeds of trust.

This bill would ~~regulate the arranging by~~ *prohibit* a mortgage servicer, as defined, ~~of from obtaining~~ a replacement policy of hazard, flood, or homeowner's insurance, collectively defined as "force-placed insurance," with respect to a residential property securing a mortgage loan, ~~when a borrower has failed to make payments on hazard, flood, or homeowner's insurance sufficient to satisfy the terms of the mortgage loan agreement unless there is a reasonable basis to believe that the borrower has failed to comply with contract requirements to maintain hazard, flood, or homeowner's insurance.~~ The bill would require a mortgage servicer to make reasonable efforts to continue or reestablish the borrower's insurance with respect to the property, *if a borrower's existing hazard, flood, or homeowner's insurance policy is paid through*

an escrow account, that the mortgage servicer advance payments to continue the borrower's existing policy, as specified, prior to arranging for force-placed insurance.

The bill would require a mortgage servicer to provide written notice notices, as specified, to a borrower prior to ~~arranging for~~ obtaining force-placed insurance. The bill would specify the circumstances, manner, and limitations under which a mortgage servicer may ~~arrange for~~ obtain force-placed insurance, and when a borrower is entitled to a refund from the mortgage servicer in connection with that insurance.

The bill would authorize a borrower to bring a civil action in connection with the mortgage servicer's violation of the provisions of the bill. The bill would authorize the Attorney General, *district attorney*, or *city attorney* to bring an action for injunctive relief, and for restitution, disgorgement, or damages, as appropriate, for the affected borrowers. The bill would also authorize the Attorney General, *district attorney*, or *city attorney* to include a claim for costs, including reasonable attorney's fees and expenses. The bill would further authorize the Attorney General, *district attorney*, or *city attorney* to levy a civil penalty not exceeding \$10,000 against any mortgage servicer who violates the provisions of the bill, and would establish notice and hearing procedures for persons subject to the civil penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 1.7 (commencing with Section 2946) is
2 added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil
3 Code, to read:

4
5 Article 1.7. Force-Placed Insurance

6
7 2946. As used in this article, the following definitions shall
8 apply:

9 (a) "Force-placed insurance" means a policy of hazard, flood,
10 or homeowner's insurance that is ~~purchased on behalf of a borrower~~
11 *obtained* by a mortgage servicer with respect to real property
12 securing a mortgage loan serviced by the mortgage servicer ~~after~~
13 ~~the borrower has failed to make payments on hazard, flood, or~~
14 ~~homeowner's insurance for that property.~~

1 (b) “Mortgage servicer” means a person that is an approved
2 servicer for the Federal Housing Administration, Veterans
3 Administration, Farmers Home Administration, Government
4 National Mortgage Association, Federal National Mortgage
5 Association, or Federal Home Loan Mortgage Corporation, and
6 directly services or offers to service mortgage loans.

7 (c) “Mortgage loan” means a federally related mortgage loan
8 as defined in Section 3500.2 of Title 24 of the Code of Federal
9 Regulations, or a loan made to finance construction of a one-to-four
10 family dwelling.

11 ~~2946.1. (a) If a mortgage servicer is aware that a borrower has~~
12 ~~failed to make a premium payment to maintain hazard, flood, or~~
13 ~~homeowner’s insurance coverage sufficient to satisfy the terms of~~
14 ~~the mortgage loan agreement, the mortgage servicer shall take~~
15 ~~reasonable actions to continue or reestablish that insurance~~
16 ~~coverage.~~

17 ~~(b) A mortgage servicer may require a borrower to provide~~
18 ~~updated premium payment information to enable the mortgage~~
19 ~~servicer to continue or reestablish insurance coverage described~~
20 ~~in subdivision (a).~~

21 ~~2946.2. A mortgage servicer shall not arrange for force-placed~~
22 ~~insurance if the mortgage servicer knows or has reason to know~~
23 ~~that the borrower has insurance coverage sufficient to satisfy the~~
24 ~~terms of the mortgage loan agreement.~~

25 ~~2946.3. If a mortgage servicer satisfies the requirements of~~
26 ~~Section 2946.1 and is not able to continue or reestablish the~~
27 ~~borrower’s hazard, flood, or homeowner’s insurance, the mortgage~~
28 ~~servicer may arrange for force-placed insurance covering the~~
29 ~~mortgaged property. Prior to arranging for force-placed insurance,~~
30 ~~the mortgage servicer shall provide written notice to the borrower,~~
31 ~~including a clear and conspicuous statement, of all of the following:~~

32 ~~(a) Procedures for the borrower to, within a reasonable period~~
33 ~~of time specified in the notice, demonstrate to the mortgage servicer~~
34 ~~that the borrower has insurance coverage sufficient to satisfy the~~
35 ~~requirements set forth in the mortgage loan agreement.~~

36 ~~(b) Procedures by which the mortgage servicer shall terminate~~
37 ~~the force-placed insurance and refund to the borrower any insurance~~
38 ~~premiums and related fees paid by or charged to the borrower.~~

39 ~~2946.4. A mortgage servicer shall provide the borrower with~~
40 ~~a refund of unearned premiums paid by the borrower or charged~~

1 to the borrower for force-placed insurance arranged by the
2 mortgage servicer if the borrower provides reasonable proof that
3 the borrower has obtained insurance coverage sufficient to satisfy
4 the terms of the mortgage loan agreement.

5 2946.5. (a) A mortgage servicer who arranges for force-placed
6 insurance in accordance with this chapter shall obtain that insurance
7 coverage at a commercially reasonable rate.

8 (b) A mortgage servicer shall not arrange for force-placed
9 insurance, or require a borrower to obtain or maintain insurance
10 coverage, in excess of the replacement cost of the improvements
11 on the mortgaged property.

12 (c) A mortgage servicer shall not arrange for force-placed
13 insurance with an affiliated entity or any entity in which the
14 mortgage servicer has an ownership interest.

15 (d) A mortgage servicer shall not split fees, give, or accept any
16 referral fees or anything else of value in connection with arranging
17 for force-placed insurance.

18 (e) A mortgage servicer shall pay to the borrower the amount
19 of any funds that the mortgage servicer receives as a result of
20 arranging for force-placed insurance in violation of this section.

21 2946.6. A borrower may bring a civil action against a mortgage
22 servicer that violates this article with respect to that borrower.

23 2946.1. (a) A mortgage servicer shall not obtain force-placed
24 insurance unless there is a reasonable basis to believe the borrower
25 has failed to comply with the mortgage loan requirement to
26 maintain hazard, flood, or homeowner's insurance.

27 (b) If the borrower's existing hazard, flood, or homeowner's
28 insurance policy is paid through an escrow account, then the
29 mortgage servicer shall advance payments to continue the
30 borrower's existing policy, unless the borrower or insurance
31 company cancels the existing policy.

32 2946.2. A mortgage servicer shall not be deemed to have a
33 reasonable basis for obtaining force-placed insurance unless the
34 requirements of this article have been met.

35 2946.3. (a) A mortgage servicer shall not impose any charge
36 on a borrower for force-placed insurance unless the mortgage
37 servicer has met all of the following conditions:

38 (1) The mortgage servicer has sent, by first-class mail, a copy
39 of the written notice as described in subdivision (b) to the
40 borrower.

1 (2) *If the mortgage servicer has not received from the borrower*
2 *written confirmation of hazard, flood, or homeowner's insurance*
3 *coverage for the property securing the mortgage loan, the*
4 *mortgage servicer has sent, by first-class mail, a second copy of*
5 *the written notice described in subdivision (b), at least 30 days*
6 *after the mailing of the first notice.*

7 (3) *The mortgage servicer has not received from the borrower*
8 *written confirmation of hazard, flood, or homeowner's insurance*
9 *coverage for the property securing the mortgage loan within 15*
10 *days from the date that the second notice was sent by the mortgage*
11 *servicer.*

12 (b) *The written notice required by subdivision (a) shall contain*
13 *all of the following:*

14 (1) *A reminder of the borrower's obligation to maintain hazard,*
15 *flood, or homeowner's insurance on the property securing the*
16 *mortgage loan.*

17 (2) *A statement that the mortgage servicer does not have*
18 *evidence of insurance coverage for the property.*

19 (3) *A clear and conspicuous statement of the procedures by*
20 *which the borrower may demonstrate that the borrower has*
21 *existing insurance coverage for the property.*

22 (4) *A statement that the mortgage servicer may obtain insurance*
23 *coverage for the property at the borrower's expense if the borrower*
24 *does not provide a demonstration of the borrower's existing*
25 *coverage in a timely manner.*

26 (5) *A statement that the cost of the insurance coverage may be*
27 *significantly higher than the cost of the borrower's previous*
28 *coverage.*

29 (6) *For first lien loans on a mortgage servicer's primary*
30 *servicing system, a statement that, if the borrower desires to*
31 *maintain his or her existing policies, the mortgage servicer will*
32 *offer an escrow account and advance the premium due on the*
33 *existing policy or policies if the borrower does all of the following:*

34 (A) *Accepts the offer of the escrow account.*

35 (B) *Provides a copy of the most recent invoice from the existing*
36 *carrier.*

37 (C) *Agrees in writing to reimburse the escrow advances through*
38 *regular escrow payments.*

1 (D) Agrees to an escrow account to both repay the advanced
2 premium and to pay for the future premiums necessary to maintain
3 any required insurance policy.

4 (E) Agrees that the mortgage servicer shall manage the escrow
5 account in accordance with the loan documents and with state and
6 federal law.

7 (7) A statement, in the case of single interest coverage, that the
8 coverage may only protect the mortgage holder's interest and not
9 the borrower's interest.

10 2946.4. A mortgage servicer shall accept any reasonable form
11 of written communication from a borrower or the borrower's
12 insurance agent of existing insurance coverage, which shall include
13 the existing insurance policy number along with the identity of,
14 and contact information for, the insurance company or agent.

15 2946.5. A mortgage servicer shall not obtain hazard, flood, or
16 homeowner's insurance for a mortgaged property, or require a
17 borrower to obtain or maintain that insurance, in excess of the
18 greater of the replacement value, the last known amount of the
19 coverage, or the outstanding loan balance, unless requested by
20 the borrower in writing.

21 2946.6. Within 15 days of the receipt by a mortgage servicer
22 of evidence of a borrower's insurance coverage, the mortgage
23 servicer shall terminate any force-placed insurance and refund to
24 the borrower all force-placed insurance premiums paid by the
25 borrower during any period during which the borrower's insurance
26 coverage and the force-placed insurance coverage were both in
27 effect, and any related fees charged to the borrower's account
28 with respect to the force-placed insurance during that period.

29 2946.7. A mortgage servicer shall not obtain force-placed
30 insurance from an affiliated entity or any entity in which the
31 mortgage servicer has an ownership interest.

32 2946.8. (a) A mortgage servicer shall not split fees, or give
33 or accept any referral fees or anything else of value, in connection
34 with obtaining force-placed insurance.

35 (b) A mortgage servicer shall pay to the borrower the amount
36 of any funds that the mortgage servicer receives as a result of
37 obtaining force-placed insurance in violation of this section.

38 2946.9. Any force-placed insurance policy shall be placed with
39 an insurer admitted to do business in this state.

1 2946.10. *No provision of this article shall be construed as*
2 *prohibiting a mortgage servicer from providing simultaneous or*
3 *concurrent notice of a lack of flood insurance pursuant to Section*
4 *102(e) of the federal Flood Disaster Protection Act of 1973.*

5 2946.11. (a) *A borrower may bring a civil action against a*
6 *mortgage servicer that violates this article with respect to that*
7 *borrower.*

8 (b) *If the borrower prevails in the civil action, the borrower*
9 *shall be awarded attorney's fees and the greater of actual damages*
10 *or five thousand dollars (\$5,000).*

11 ~~2946.7.~~

12 2946.12. (a) *In addition to the remedy provided in Section*
13 ~~2946.6~~ *2046.11, the Attorney General, a district attorney, or a city*
14 *attorney may bring an action for injunctive relief, and for*
15 *restitution; or disgorgement, or damages, as appropriate, on behalf*
16 *of injured borrowers, and may include a claim for costs, including*
17 *reasonable attorney's fees and expenses costs of investigation.*

18 (b) *In addition to the remedies provided in subdivision (a) and*
19 ~~in Section—2946.6~~ *2946.11, the Attorney General, a district*
20 *attorney, or a city attorney may levy a civil penalty not exceeding*
21 *ten thousand dollars (\$10,000) against any mortgage servicer who*
22 *violates this article.*

23 (c) *Before a civil penalty is levied, the person charged with the*
24 *violation shall be given a written notice of the nature of the*
25 *violation and the amount of the proposed penalty, and shall have*
26 *the right to request a hearing within 20 days after receiving notice*
27 *of the proposed penalty. A notice of the proposed penalty that is*
28 *sent by certified mail to the last known address of the person*
29 *charged shall be considered to have been received even if delivery*
30 *is refused or the notice is not accepted at that address. If a hearing*
31 *is requested, notice of the time and place of the hearing shall be*
32 *given at least 10 days before the date set for the hearing. At the*
33 *hearing, the person shall be given an opportunity to review the*
34 *Attorney General's, district attorney's, or city attorney's evidence*
35 *and to present evidence on his or her own behalf. If a hearing is*
36 *not timely requested, the Attorney General, district attorney, or*
37 *city attorney may impose the penalty proposed without a hearing.*